

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE**

In Re: R.M. Technologies, Inc.
Petition No. 2002-115-053-019

December 10, 2003

MEMORANDUM OF DECISION

Procedural History

On April 1, 2003, the Department of Public Health ("the Department") filed a Statement of Charges ("the Charges") against asbestos abatement contractor license number 000045 held by R.M. Technologies, Inc. of Lawrence, Massachusetts ("respondent"). On May 14, 2003, respondent was provided with a Notice of Hearing and the Charges. The Notice of Hearing designated the undersigned to rule on all motions, determine findings of fact and conclusions of law, and issue a final Order. H.O. Exh. 1

On June 3, 2003 the Department filed a Motion to Deem Allegations Admitted. H.O. Exh. 2. On June 5, 2003, the Department filed a Motion to Amend Motion to Deem Allegations Admitted. H.O. Exh. 3. The Motion to Amend the Motion to Deem Allegations Admitted, made no changes to the original motion except to add an allegation that respondent signed the return receipt for the certified mailing of the Notice of Hearing on May 27, 2003.

On June 6, 2003, the undersigned ordered respondent to file an Answer by June 16, 2003. Such Order also advised respondent that failure to file an Answer by June 16, 2003, could result in the granting of the Department's Motion. H.O. Exh. 4. Respondent did not file an Answer to the Charges by June 16, 2003; and, on June 17, 2003, the Motion to Deem Allegations Admitted was granted. H.O. Exh. 6.

On June 19, 2003, an administrative hearing was held to adjudicate the Charges. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes ("the Statutes") and §§19a-9-1, *et seq.*, of the Regulations of Connecticut State Agencies ("the Regulations"). Rafael Guzman, Project Manager for R.M. Technologies, appeared for respondent; and, Attorney Linda Fazzina represented the Department at the hearing.

This Memorandum of Decision is based entirely on the record, and sets forth this Hearing Officer's findings of fact, conclusions of law, and order.

Allegations

1. In paragraphs one and six of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000045.
2. In paragraphs two and six of the Charges, the Department alleges that in or about November 2002, respondent performed an asbestos abatement project at the former Cardinal Mills complex, 56 Pameacha Avenue, Middletown, Connecticut ("the property").

Count One

3. In paragraph three of the Charges, the Department alleges that on or about November 2 and/or 3, 2003, in connection with the asbestos abatement project at the property, respondent violated Connecticut's standards applicable to the performance of asbestos abatement, which standards are found at §§19a-332a-1 to 19a-332a-16, inclusive, of the Regulations in one or more of the following ways, in that respondent failed to establish and/or maintain applicable engineering controls, until compliance with the reoccupancy requirements of §19a-332-12 of the Regulations is achieved, including, but not limited to:
 - (a) failed to isolate the work area from non-work area(s) with air-tight barriers and/or to maintain said air-tight barriers, in violation of §19a-332a-5(c) of the Regulations;
 - (b) failed to cover applicable floor and/or wall surfaces with polyethylene sheeting or the equivalent and/or to maintain said floor and/or wall covering, in violation of §19a-332a-5(e) of the Regulations;
 - (c) failed to establish and/or maintain negative pressure ventilation units with high efficiency particulate air ("HEPA") filtration in sufficient number to allow at least one air change every fifteen minutes, in violation of §19a-332a-5(h) of the Regulations; and/or,
 - (d) failed to utilize clean up procedures, until no visible residue was observed, in violation of §19a-332a-5(g) of the Regulations.
4. In paragraph 4 of the Charges, the Department alleges that on or about November 2 and/or 3, 2002, in connection with the asbestos abatement project at the property, respondent failed to obtain approval for an alternative work practice procedure from the Department in violation of §19a-332a-11 of the Regulations.
5. In paragraph 5 of the Charges, the Department alleges that the above described conduct constitutes grounds for disciplinary action pursuant to §§19a-332a(b) and/or 20-440 of the Statutes taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-

332-5(e), 19a-332a-5(g), 19a-332a-5(h), 19a-332a-11, 19a-332a-12, 20-440-1, and/or 20-440-6(b) of the Regulations.

Count Two

6. In paragraph 7 of the Charges, the Department alleges that on or about November 5, 2002, in connection with the asbestos abatement project at the property, respondent violated the Regulations in one or more of the following ways, in that respondent:
 - (a) failed to post warning signs at all approaches to the work area(s), in violation of §19a-332a-5(a) of the Regulations;
 - (b) failed to isolate the work area(s) from the non-work area(s) with air-tight barriers, in violation of §19a-332a-5(c) of the Regulations;
 - (c) failed to cover applicable floor and/or wall surfaces with polyethylene sheeting or the equivalent, in violation of §19a-332a-5(e) of the Regulations;
 - (d) failed to provide negative pressure ventilation units with HEPA filtration in sufficient number to allow at least one work place air change every fifteen minutes, in violation of §19a-332a-5(h) of the Regulations; and/or,
 - (e) failed to construct properly and/or maintain a worker decontamination system, in violation of §19a-332a-6 of the Regulations.
7. In paragraph 8 of the Charges, the Department alleges that the above described conduct constitutes grounds for disciplinary action pursuant to §§19a-332a(b) and/or 20-440 of the Statutes taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(a), 19a-332-5(c), 19a-332a-5(e), 19a-332a-5(h), 19a-332a-6, 20-440-1, and/or 20-440-6(b) of the Regulations.

Findings of Fact

1. Respondent is a small, family business that Mr. Guzman started in 1997. Mr. Guzman was authorized by respondent's President, Mr. Guzman's brother-in-law, to represent respondent in this matter. Tr. pp. 3-7.
2. The allegations set forth in the Charges are deemed admitted and true. H.O. Exh. 6; Tr. pp. 8-15.
3. Respondent's violations of the Regulations posed health risks to the workers at the site at the time of the project, subsequent workers who were scheduled to work at the site after respondent completed its project, and to the public located near the property. Tr. pp. 64-67.
4. Following the inspections, respondent mitigated the damages caused by its initial violations of the Regulations; however, due to the airborne nature of asbestos, and the

likelihood that particulates of asbestos were carried out of the workplace on the clothing of workers who were not properly decontaminated, respondent could not fully mitigate the dangers it created to workers and the public by its violations of the Regulations. Tr. pp. 59, 64-67.

Discussion

Pursuant to §19a-14 and 19a-17 of the Statutes, the Department has the authority to discipline an asbestos abatement contractor license including, but not limited to, the authority to revoke said license. Further, pursuant to §19a-332e of the Statutes and §20-440-6 of the Regulations, the Department may assess an asbestos abatement contractor a civil penalty of up to \$10,000 per each individual violation.

In establishing the underlying violations to support such discipline, the Department bears the burden of proof by a preponderance of the evidence. *Swiller v. Comm'r of Public Health*, CV-950705601, Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S.Ct. 999, *reh'g den.*, 451 U.S. 933 (1981); *Bender v. Clark*, 744 F.2d 1424 (10th Cir. 1984); *Sea Island Broadcasting Corp. v. F.C.C.*, 627 F.2d 240, 243 (D.C. Cir. 1980); all as cited in *Bridgeport Ambulance Service, Inc. v. Connecticut Dept. of Health Services*, No. CV 88-0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989).

In view of the granting of the Department's Motion to Deem Allegations Admitted, the Department has established the violations noted above by a preponderance of the evidence. The Department has requested that respondent be assessed a civil penalty of \$10,000; and, respondent has requested that such penalty, if ordered, be paid in installments. The Department has further requested that, if payment in installments is ordered, respondent's license be placed on probation until the installments are paid in full.

The evidence supports the requested remedy. While respondent claimed to be unaware of the regulatory requirements, and claimed to have believed that an alternative work practice was approved, a preponderance of the evidence refutes these claims. Even if respondent mistakenly believed an alternative work practice was approved, respondent did not even comply with the alternative work practice requested.

The evidence also establishes that respondent was first licensed in Connecticut in 1994. Thus, this particular project was not an isolated event as respondent claims. Moreover,

respondent had a project monitor who discussed the regulatory requirements with respondent at length; and, in any event, a licensee is charged with knowledge of the regulations that govern its license. Any claim of ignorance is not only not credible based on the evidence, but also would not constitute sufficient grounds to excuse respondent's conduct even if true.

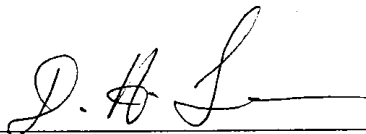
Order

Based on the record in this case, the above Findings of Fact and Conclusions of Law, and pursuant to §§19a-14 and 19a-17(a) of the Statutes, the following discipline is hereby ordered concerning respondent's asbestos abatement contractor license number 000045:

1. Respondent's asbestos abatement contractor license shall be placed on probation for a period of one year under the following terms and conditions:
 - (a) Within 45 days of the issuance of this decision, i.e. by **January 25, 2004**, respondent shall pay the first installment of a \$10,000 civil penalty. The first installment shall be in the amount of \$4,000.
 - (b) The remaining \$6,000 of the \$10,000 civil penalty shall be payable as follows: \$2,000 shall be paid by **May 10, 2004**; \$2,000 shall be paid by **August 10, 2004**; and, \$2,000 shall be paid by **November 10, 2004**.
 - (c) All payments shall be by certified or cashier's check made payable to "Treasurer, State of Connecticut." All checks shall reference the Petition Number on the face of the check.
 - (d) The payments on the civil penalty shall be sent to:

Ronald Skomro
State of Connecticut Department of Public Health
450 Capitol Avenue, MS #51AIR
P.O. Box 34038
Hartford, CT 06134-0308
2. If respondent pays the civil penalty in full at any time prior to the due date of the last installment payment, respondent may petition the Department to terminate the probation of respondent's license as soon as the last payment is made.

3. Any failure to comply with this Order shall result in an extension of the period of probation until the civil penalty is paid in full, and may also constitute grounds for further disciplinary action against respondent's license, up to and including a revocation of respondent's license.
4. This decision does not dispose of any criminal liability unless respondent receives or has received a written agreement from the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau stating that this decision resolves any such liability.
5. This decision is effective upon signature by the Hearing Officer.



Donald H. Levenson, Esq.
Hearing Officer

12-10-03
Date